

AMENDED IN ASSEMBLY JANUARY 16, 1996

AMENDED IN ASSEMBLY JANUARY 3, 1996

AMENDED IN ASSEMBLY APRIL 5, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 612

Introduced by Assembly Member Aguiar

February 17, 1995

An act to amend ~~Sections 22341 and 22457~~ *Section 22341* of the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as amended, Aguiar. California Finance Lenders Law.

Existing law, the California Finance Lenders Law, operative July 1, 1995, provides that no finance broker or lender licensed under that law may make a loan to refinance a retail installment contract, as defined, except under certain conditions. One of these conditions is that the buyer has been making installment payments required by the contract for at least 90 days.

This bill would delete that condition and instead provide that the date of the loan contract must be at least 90 days from the date the retail installment contract was executed by the buyer.

~~Existing law also provides that in lieu of the applicability of certain disclosure requirement provisions, an open-end loan agreement shall contain the name, address, and license~~

~~number of the finance lender and shall disclose the nature of the security taken, the method of determining the minimum payments that will be required to repay the initial advance and any subsequent advances on the loan, and the agreed rate of charge.~~

~~This bill would make a technical, nonsubstantive change in that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22341 of the Financial Code is
2 amended to read:

3 22341. (a) No licensee may make a loan to refinance
4 a retail installment contract subject to Chapter 1
5 (commencing with Section 1801) of Title 2 of Part 4 of
6 Division 3 of the Civil Code, that is held by the licensee,
7 its subsidiaries, or affiliates, unless all of the following
8 conditions are met:

9 (1) The date of the loan contract is not less than 90 days
10 from the date the retail installment contract was
11 executed by the buyer. The retail installment contract has
12 a term of not less than 180 days and does not provide for
13 any scheduled installment that is more than twice the
14 amount of any other scheduled installment.

15 (2) The loan provides for additional proceeds other
16 than for insurance in an amount not less than the
17 outstanding principal balance of the retail installment
18 contract and provides for payment in full of the retail
19 installment contract.

20 (3) The licensee shall not take a security interest in
21 real property that is the principal residence of the
22 borrower unless the loan has a principal amount of five
23 thousand dollars (\$5,000) or more and the following
24 notice written in the same language, for example,
25 Spanish, as used in the loan documents, is incorporated
26 into the statement used to comply with Section 22338:

27
28 “WARNING TO BORROWER: IF YOU ACCEPT THIS

1 LOAN YOU WILL BE PUTTING UP YOUR HOME AS
2 SECURITY. THIS MEANS THAT YOUR HOME
3 COULD BE SOLD WITHOUT YOUR PERMISSION
4 AND WITHOUT ANY COURT ACTION IF YOU MISS
5 ANY PAYMENT AS REQUIRED BY THIS LOAN.”

6
7 This notice shall be printed in not less than 14-point
8 bold type, shall be set apart from the rest of the statement
9 by a border, and shall appear directly above a signature
10 block which shall be signed by the borrower. A security
11 interest described in this paragraph that is taken without
12 prior notice and the borrower’s signature, as required by
13 this paragraph, shall be void and unenforceable.

14 (4) The licensee shall not sell, attempt to sell, or agree
15 to sell any goods or services to the borrower, other than
16 credit insurance as defined in Section 22314 and
17 insurance required by the licensee to protect its security
18 interest, until the loan has been in effect for at least 30
19 days. The amount of insurance required by the licensee
20 to protect its security interest shall not exceed the lesser
21 of the principal amount of the loan or the replacement
22 value of the security as determined by the insurer.

23 (5) A licensee that is an assignee of the retail
24 installment contract shall continue to be subject under
25 the loan to all equities and defenses of the borrower
26 against the seller arising out of the sale, notwithstanding
27 an agreement to the contrary.

28 (6) The loan shall not provide for any scheduled
29 installment that is more than twice the amount of any
30 other scheduled installment. This paragraph does not
31 apply to a loan of a bona fide principal amount of ten
32 thousand dollars (\$10,000) or more.

33 (7) If a loan of a bona fide principal amount of ten
34 thousand dollars (\$10,000) or more provides for any
35 scheduled installment that is more than twice the amount
36 of any other scheduled installment, the loan shall contain
37 the following provision:

38
39 “The payment schedule contained in this loan requires
40 that you make a balloon payment of \$____ (amount

1 of balloon payment) which is a payment of more than
2 double the amount of the regular payments. You have
3 an absolute right to obtain a new payment schedule if
4 you default in the payment of any balloon payment.”

5
6
7 If the borrower defaults in the payment of any balloon
8 payment, the borrower shall be given an absolute right to
9 obtain a new payment schedule. Unless agreed to by the
10 borrower, the installment amounts under the new
11 schedule shall not be substantially greater than the
12 average of the preceding installments.

13 (b) A loan made pursuant to this section shall be
14 subject to this division and not to Chapter 1 (commencing
15 with Section 1801) of Title 2 of Part 4 of Division 3 of the
16 Civil Code.

17 (c) An action by any licensee or borrower on a loan
18 made pursuant to this section shall be tried in the county
19 in which the loan was signed by the borrower, in the
20 county in which the borrower resided at the time the loan
21 was entered into, or in the county in which the borrower
22 resides at the commencement of the action.

23 (d) Paragraphs (6) and (7) of subdivision (a) do not
24 apply to open-end loans.

25 (e) A security interest provided by any retail
26 installment contract in violation of subdivision (b) of
27 Section 1804.3 of the Civil Code shall not serve as
28 consideration in whole or in part for a loan made under
29 this section, notwithstanding any agreement to the
30 contrary.

31 ~~SEC. 2. Section 22457 of the Financial Code is~~
32 ~~amended to read:~~

33 ~~22457. In lieu of Section 22332, the open-end loan~~
34 ~~agreement shall contain the name, address, and license~~
35 ~~number of the finance lender and shall disclose the nature~~
36 ~~of the security taken, the method of determining the~~
37 ~~minimum payments required to repay the initial advance~~

1 ~~and any subsequent advances on the loan, and the agreed~~
2 ~~rate of charge.~~

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